

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Israel Linkenberg, individually and on behalf of all others
similarly situated,

Plaintiff,

Civil Action No: 7:22-cv-485

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

-v.-

Jefferson Capital Systems, LLC,

Defendant(s).

Plaintiff Israel Linkenberg, (hereinafter referred to as “Plaintiff”) brings this Class Action Complaint by and through his attorneys, Stein Saks, PLLC, against Defendant Jefferson Capital Systems, LLC (hereinafter referred to as “Defendant”), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff’s personal knowledge.

INTRODUCTION/PRELIMINARY STATEMENT

1. Congress enacted the Fair Debt Collection Practices Act (“the FDCPA”) in 1977 in response to the “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. §1692(a). At that time, Congress was concerned that “abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” *Id.* Congress concluded that “existing laws...[we]re inadequate to protect consumers,” and that “the effective

collection of debts” does not require “misrepresentation or other abusive debt collection practices.” 15 U.S.C. §§ 1692(b) & (c).

2. Congress explained that the purpose of the Act was not only to eliminate abusive debt collection practices, but also to “insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.” *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate *Id.* § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692 et. seq. The Court has pendent jurisdiction over the State law claims in this action pursuant to 28 U.S.C. § 1337(a).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) as this is where the Plaintiff resides, as well as where a substantial part of the events or omissions giving rise to the claim occurred.

NATURE OF THE ACTION

5. Plaintiff brings this class action on behalf of a class of New York consumers under § 1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act (“FDCPA”), and

6. Plaintiff is seeking damages and declaratory relief.

PARTIES

7. Plaintiff is a resident of the State of New York, County of Rockland.

8. Defendant is a “debt collector” as the phrase is defined in 15 U.S.C. § 1692(a)(6), with an address for service of process at Corporation Service Company, 80 State Street Albany, New York, 12207.

9. Upon information and belief, Defendant uses the mail, telephone, and facsimile and regularly engages in business, the principal purpose of which is to attempt to collect debts alleged to be due another.

CLASS ALLEGATIONS

10. Plaintiff brings this claim on behalf of the following case, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).

11. The Class consists of:

- a. all individual consumers in the State of New York;
- b. to whom Defendant sent a collection letter attempting to collect a consumer debt;
- c. for which the debt is not time barred by the statute of limitations;
- d. in which the letter included a statement that the statute of limitations has expired;
- e. which letter was sent on or after a date one (1) year prior to the filing of this action and on or before a date twenty-one (21) days after the filing of this action.

12. The identities of all class members are readily ascertainable from the records of Defendant and those companies and entities on whose behalf they attempt to collect and/or have purchased debts.

13. Excluded from the Plaintiff Class are the Defendant and all officers, members, partners, managers, directors and employees of the Defendant and their respective immediate families, and legal counsel for all parties to this action, and all members of their immediate families.

14. There are questions of law and fact common to the Plaintiff Class, which common issues predominate over any issues involving only individual class members. The principal issue is whether the Defendant's written communications to consumers, in the form attached as Exhibit A violates 15 U.S.C. §§ 1692e, 1692f, and 1692g et seq.

15. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories. The Plaintiff will fairly and adequately protect the interests of the Plaintiff Class defined in this complaint. The Plaintiff has retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiff nor his attorneys have any interests, which might cause them not to vigorously pursue this action.

16. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- a. **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges, that the Plaintiff Class defined above is so numerous that joinder of all members would be impractical.
- b. **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Plaintiff Class and those questions' predominance over any questions or issues involving only individual class members. The principal issue is whether the Defendant's written communications to consumers, in the form attached as Exhibit A violates 15 U.S.C. §§ 1692e, 1692f, and 1692g et seq.
- c. **Typicality:** The Plaintiff's claims are typical of the claims of the class members. The Plaintiff and all members of the Plaintiff Class have claims arising out of the Defendant's common uniform course of conduct complained of herein.

- d. **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the class members insofar as Plaintiff has no interests that are averse to the absent class members. The Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor his counsel have any interests which might cause them not to vigorously pursue the instant class action lawsuit.
- e. **Superiority:** A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

17. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

18. Depending on the outcome of further investigation and discovery, Plaintiff may, at the time of class certification motion, seek to certify a class(es) only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

FACTUAL ALLEGATIONS

19. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered above herein with the same force and effect as if the same were set forth at length herein.

20. Some time prior to March 10, 2019, on a date better known by Defendant, an obligation was incurred by Plaintiff to the original creditor, Verizon Wireless. The subject debt was allegedly incurred by Plaintiff solely for personal, household or family purposes, specifically for telephone services.

21. Defendant is a purchaser and servicer of consumer charged-off and bankruptcy accounts headquartered in St. Cloud, Minnesota. Defendant purchases consumer accounts from creditors at a substantial discount from the face value of the debts. It then attempts to collect these debts.

22. Upon information and belief, Defendant purchased the debt, originally owned by Verizon Wireless, for the purpose of debt collection.

23. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

24. Verizon Wireless is a “creditor” as defined by 15 U.S.C. § 1692a (4).

25. The Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

26. The subject obligation is consumer-related, and therefore a “debt” as defined by 15 U.S.C. § 1692a(5).

Violation – December 18, 2021 Collection Letter

27. On or about December 18, 2021, the Defendant sent the Plaintiff a collection letter (“Letter”) regarding the subject debt. (See Letter at Exhibit A.)

28. The Letter states that as of March 10, 2019, Plaintiff owed \$354.47.

29. In relevant part, the Letter also states:

“The legal time limit (Statute of Limitations) for suing you to collect this debt has expired.”

30. Defendant unequivocally states that the statute of limitations has expired.

31. However, the subject debt is still within the statute of limitations and is not time barred.

32. Upon information and belief, the alleged debt is subject to New York law as the Plaintiff is a New York resident, the underlying contract was formed in New York and therefore bound by New York State Statute of Limitations.

33. The least sophisticated consumer, and the Plaintiff included, was led to believe the subject debt was shielded from a lawsuit.

34. The Letter suggests that the statute of limitations has expired and continues to explain the rights of a consumer, should the debt collector wrongly sue the debtor.

35. Then, the Letter warns the consumer to tell the court that the statute of limitations has expired to prevent the creditor from obtaining a judgment.

36. Further, Defendant warns to “BE AWARE: If you make a payment on the debt, admit to owing the debt, promise to pay the debt, or waive the statute of limitations on the debt, the creditor’s right to sue you to make you pay the entire debt may START AGAIN.”

37. The least sophisticated consumer, and the Plaintiff included, would heed this warning and cease payment on the debt as well as any other communications regarding the debt, fearful of restarting debt collection efforts on a debt that is currently legally uncollectable.

38. In reality, this debt is still subject to potential litigation.

39. In result, the Plaintiff incurred an informational injury as Defendant misstated the nature and character of the debt.

40. Furthermore, Plaintiff might have paid part or all of the outstanding debt had he known he could still be sued.

41. Defendant's inaccurate information changed the Plaintiff's position and altered his response to Defendant's collection efforts.

42. These violations by Defendant were knowing, willful, negligent and/or intentional, and Defendants did not maintain procedures reasonably adapted to avoid any such violations.

43. Defendant's collection efforts with respect to the subject debt from Plaintiff caused Plaintiff to suffer concrete and particularized harm, *inter alia*, because the FDCPA provides Plaintiff with the legally protected right not to be misled or treated unfairly with respect to any action regarding the collection of any consumer debt.

44. The Plaintiff thought he had a legal defense that the subject debt was time-barred from litigation.

45. Generally, these representations are material because they are likely to affect a consumer's choice or conduct regarding how to respond to an allegedly outstanding debt claim and are likely to mislead consumers acting reasonably under the circumstances.

46. Specifically, Defendant's careless, deceptive, misleading and unfair representations with respect to its collection efforts were material misrepresentations that affected and frustrated Plaintiff's ability to intelligently respond to Defendant's collection efforts because Plaintiff was afraid of restarting the clock on Defendant's ability to litigate the subject debt.

47. Plaintiff was confused and misled to his detriment by the statements in the dunning letter, and relied on the contents of the letter to his detriment.

48. Plaintiff would have pursued a different course of action were it not for Defendant's statutory violations.

49. As a result of Defendant's deceptive, misleading and unfair debt collection practices, Plaintiff has been damaged.

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1692e *et seq.*

50. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

51. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.

52. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

53. Defendant violated §1692e:

- a. As the letter falsely represents the true character and legal status of the debt in violation of §1692e (2); and
- b. By making a false and misleading representation in violation of §1692e (10).

54. By reason thereof, Defendant is liable to Plaintiff for judgment in that Defendant's conduct violated Section 1692e et seq. of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

COUNT II

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1692f *et seq.*

55. Plaintiff repeats, reiterates, and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

56. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692f.

57. Pursuant to 15 U.S.C. § 1692f, a debt collector may not use any unfair or unconscionable means in connection with the collection of any debt.

58. Defendant violated this section by unfairly providing a false statement of the statute of limitations.

59. By reason thereof, Defendant is liable to Plaintiff for judgment in that Defendant's conduct violated Section 1692f et seq. of the FDCPA, actual damages, statutory damages, costs, and attorneys' fees.

COUNT III

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. §1692g *et seq.*

60. Plaintiff repeats, reiterates, and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

61. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692g.

62. Pursuant to 15 U.S.C. § 1692g,

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing –

1. The amount of the debt;

2. The name of the creditor to whom the debt is owed;
3. A statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
4. A statement that the consumer notifies the debt collector in writing within thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
5. A statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

63. In addition to the required disclosures that must be made, the FDCPA further provides that if the consumer notifies the debt collector in writing within the thirty-day period ... that the debt, or any portion thereof, is disputed ... the debt collector shall cease collection ... until the debt collector obtains verification of the debt ... and a copy of such verification is mailed to the consumer by the debt collector. 15 U.S.C. § 1692g(b).

64. Defendant violated these sections by stripping Plaintiff of his right to dispute the debt, as a reasonable consumer would not dispute a debt that is time-barred by the statute of limitations.

65. Accordingly, the Defendant failed to properly advise the Plaintiff of his dispute rights.

66. By reason thereof, Defendant is liable to Plaintiff for judgment in that Defendant's conduct violated Section 1692g et seq. of the FDCPA, actual damages, statutory damages, costs, and attorneys' fees.

DEMAND FOR TRIAL BY JURY

67. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Isreal Linkenberg, individually and on behalf of all others similarly situated, demands judgment from Defendant Jefferson Capital Systems, LLC as follows:

1. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative, and Tamir Saland, Esq. as Class Counsel;
2. Awarding Plaintiff and the Class statutory damages;
3. Awarding Plaintiff and the Class actual damages;
4. Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
5. Awarding pre-judgment interest and post-judgment interest; and
6. Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: January 19, 2022

Respectfully Submitted,

STEIN SAKS, PLLC

/s/ Tamir Saland

Tamir Saland, Esq.
One University Plaza, Ste. 620
Hackensack, NJ 07601
Ph: 201-282-6500 ext. 122
Fax: 201-282-6501
tsaland@steinsakslegal.com
Counsel for Plaintiff